United Nations CAT/C/FIN/CO/7/Add.1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
2 January 2018

English only

Committee against Torture

Concluding observations on the seventh periodic report of Finland

Addendum

Information received from Finland on follow-up to the concluding observations*, **

[Date received: 7 December 2017]

* The present document is being issued without formal editing.

** The annex to the present document, which contains the answers of the Parliamentary Ombudsman to paragraphs 14 and 15 of the concluding observations, is available for consultation on the Committee's website.

GE.18-00003(E)

1800003

Please recycle

7)

1. Chapter 8 of the Criminal Code contains statutes of limitations for offences. Torture is punishable according to chapter 11, section 9 (a). The maximum penalty for torture is twelve years of imprisonment. Thus, the maximum penalty for torture according to Criminal Code (11:9(a)) is the highest imprisonment for a fixed period available in the Criminal Code. According to chapter 8, section 1(2)1 of the Criminal Code, this means that the right to bring charges for torture is time-barred if charges have not been brought within twenty years from the day the crime was committed. Additionally, chapter 8, section 4 foresees the possibility of continuing this period with one year, where, for example, the offence has been taken under preliminary investigation exceptionally late.

8(a)

2. Act on the Treatment of Persons in Police Custody (841/2006), chapter 2, section 3, and Act on the Treatment of Aliens Placed in Detention and on Detention Units (116/2002), chapter 2, section 5, aliens who are deprived of their liberty and placed in detention shall be informed of their rights and obligations without delay. The information shall be given at least verbally and interpreted to the person but, whenever possible, in writing in the person's native language or another language which the person may reasonably be presumed to understand.

8(b)

3. Current Act on the Treatment of Persons in Police Custody does not require any systematic medical screening to be arranged in connection with the arrival of apprehended persons.

4. As provided in chapter 5, section 1 of the said Act, police prisons apply discretionary assessment and respect the wishes and requests of the customer. Underlying the said Act is the notion of the excellent Finnish general healthcare system having comprehensive responsibility for maintaining health and therefore there being no need, in the absence of acute reasons, regularly to perform any initial or other medical screening on persons held for brief periods in police detention facilities.

8(c)

5. Key areas of development in the reform of the current Criminal Investigations Act (805/2011) included promotion of the audio and video recording of interrogations, Under the Act, an interrogation may be audio and video recorded in all cases, while in certain situations provided in law, interrogations must be audio and video recorded. The latter applies to situations where, in consideration of the nature of the matter or of circumstances related to the person being interrogated, there is reason to do so. The interview of an injured party and a witness shall be audio and video recorded if the statement to be given in the interview is intended to be used as evidence in criminal proceedings and the person interviewed probably cannot be heard in person in court.

9(a)

6. According to the Act on the Treatment of Persons in Police Custody, chapter 2, section 2, a close person of the person deprived of liberty or another person, as indicated by the person deprived of liberty, must be notified without undue delay of the deprivation of liberty. However, without a special reason such notification may not be given against the will of the person concerned. Nonetheless, if a person has been deprived of his or her liberty due to a criminal offence, in the interests of safeguarding the criminal investigation the police may decide to defer the notification for no more than 48 hours from the

apprehension of the person. Under the same Act (chapter 7, section 6), an alien who has been deprived of his or her liberty has the right to contact the diplomatic or consular mission of his or her native country, and the said person must be informed of this right (chapter 2, section 3).

11)

7. The use of evidence obtained through torture is absolutely prohibited (Code of Judicial Procedure (4/1734), chapter 17, section 25, subsection 1). The use of evidence obtained through ill-treatment less severe than torture is evaluated on the basis of the general provision in sub-section 2.

13(d)

8. Project Developing National Mental Health Policies for Refugees is targeting all refugees and asylum seekers residing in Finland. It began in 2016 and will go on until the end of 2018. The project aims at developing a national model for the mental health work of refugees and people with other similar statuses, including victims of THB. The model gives detailed recommendations for recognition and treatment of mental health problems (including victims of torture) among refugees and asylum seekers in Finland.

13(f)

9. The recommended system for generating statistics on detainees already exists to a certain extent. The POLSTAT system provides data, in chart format, on the gender, age and nationality of persons detained by decision of the Border Guard. Data on ethnic origin can be obtained when necessary from other documents.

17(a)

10. According to the Government proposal (252/2016) on alternatives to and the organization of remand prison, the present maximum duration for keeping remand prisoners in police facilities would be shortened from a maximum of 30 days to 7 days. Exceptions from this proposed maximum duration could be only if necessary, in exceptional cases and for severe reasons, e.g. in order to ensure the safety of the remand prisoner. The decision would always be made by court. The legislative changes are expected to enter into force on 1 January 2019. For more details, please see below 17 (d).

17(b)

11. In the Government proposal (252/201, see above 17 (a)) the Government introduces two new alternatives to remand prison. These are the *intensified travel ban*, which would be an alternative to pre-trial detention before the decision of the first stage court, and *arrest as an alternative to remand imprisonment*, to be used after the decision of the first stage court and when the convicted person has appealed the judgment.

12. Both measures will include electronic monitoring, an obligation to stay home at least 12 and at the most 22 hours daily (the court would have some discretion in this matter with regard to the intensified travel), and restrictions to visit certain places or to contact certain persons.

17(d)

13. A working group to explore alternatives to remand prison and the organisation of remand prison published its report in January 2016. The working group stated that the main

principle should be that all remand prisoners are placed to the prison directly after the court's decision on remand. This goal must be achieved by 2025.

14. At present, there are not enough places in regular remand prisons for all approximately 85 remand prisoners kept in police detention facilities. Therefore the first step is to shorten the time that a prisoner is held in police facilities. By shortening the time spent in police detention facilities from 30 days to 7 days, the average number of remand prisoners in these facilities would decrease by approximately 50 per cent of remand prisoners in police detention facilities.

15. Based on the report of the working group, the Government proposal (252/2016), described above in 17 a, was given to Parliament in November 2016.

16. A remand prisoner could be placed in police facilities only when necessary, and only in order to segregate the remand prisoner; for safety reasons, or if the investigation of the crime so requires. Also in these cases the maximum duration would be seven days. This duration could be longer than seven days only in very exceptional cases and for severe reasons, for example based on security of the remand prisoner. The decision would always be made by court.

19)

17. In Finland there are on average less than ten imprisoned juveniles on a daily basis. Currently six of these are remand prisoners Due to the limited amount of juvenile detainees there are only two wards for convicted juveniles, the upper age limit for these being *de facto* 23 and 25. In addition, there is one ward for juvenile remand prisoners up to 21 years of age.

18. According to the Remand Imprisonment Act a remand prisoner under 18 years of age shall be held apart from adult remand prisoners unless otherwise required by his or her best interests, and the Imprisonment Act includes a provision of the same content. Allowing taking into consideration the best interests of a prisoner under 18 years of age provides for some flexibility in arranging the placement of juveniles, *e.g.* placing them in prisons in the proximity of their families in order to facilitate the maintaining of family ties.

19. The Criminal Sanctions Agency has issued on 13 June 2017 an instruction regarding the treatment of juvenile prisoners under the age of 18. The instruction reminds prison personnel of its duty to notify the social care authorities of the municipality in which the prison is located in when a juvenile under the age of 18 years arrives at the prison.

20. The Government intends to take steps to place juveniles outside prisons and remand prisons as well as to separate juvenile detainees from adults as much as possible and as is deemed to be in the best interest of juveniles. Such steps can be taken within the framework of the current and upcoming legislation. In addition, the Government will to explore possibilities for legislative changes in order to allow placement of juvenile remand prisoners in institutions outside remand prisons, primarily within health care facilities.

21)

21. Helsinki prison has as of spring 2017 no more cells without appropriate sanitary equipment, including toilets. In the Hämeenlinna prison only 45 cells without a toilet are currently in use. When the construction of the new Hämeenlinna Prison (female offenders) is completed in spring 2020, there will be no more cells without toilets.

23)

22. Act on Special Care for Persons with Intellectual Disabilities (519/1977, Intellectual Disabilities Act) lays down provisions on strengthening the right of self-determination, on involuntary special care, and on the use of restrictive measures in special care. Intellectual

Disabilities Act includes provisions on strengthening the right of self-determination, supporting independent ability to cope and reducing the use of restrictive measures.

23. The decision on committing a person to involuntary special care, as well as the decision on continuing involuntary special care, must be submitted to the Administrative Court for approval within 14 days of the date of the decision. The Administrative Court shall consider the matter as a matter of urgency. The said decisions may be appealed to the Administrative Court.

24. Decisions on commitment to and the continuation of involuntary treatment under the Mental Health Act (1116/1990) may be appealed to the Administrative Court, which under the said Act must hear matters of commitment and appeal as a matter of urgency. Pursuant to a decision on commitment to treatment, a patient may be kept in treatment for no more than three months, after which the decision on continued treatment must be submitted to the Administrative Court for approval. When the patient is a minor, the decision on commitment alone shall immediately be submitted to the Administrative Court for approval. The decisions on the continuation of forensic psychiatric treatment are also submitted to the Administrative Court. The decision on continuation of treatment must be taken no later than within six months of commitment to treatment.

25. The Ministry of Social Affairs and Health is currently preparing legislation which concerns strengthening the right of self-determination of clients and the conditions for restrictions on the right of self-determination. The aim is to strengthen the self-determination of clients and patients and to reduce the use of restrictive measures. A particular focus area is to prevent in advance the arising of situations which necessitate the use of restrictive measures. The Government proposal is to be submitted to Parliament in 2018.

25)

26. According Remand Imprisonment Act (768/2005) chapter 13, section 2, and Imprisonment Act (768/2005) chapter 18, section 2), persons deprived of their liberty may be handcuffed only when criteria laid down in law are met, e.g. in order to prevent threatening violence. A decision regarding handcuffing is thus always discretionary. Handcuffing may not last longer than necessary. The equipment of transportation vehicles has improved and hence handcuffing persons deprived of their liberty during transfers is only done as a result of a discretionary decision on an individual basis as is laid down in the Remand Imprisonment Act and Imprisonment Act.

29(a)

27. Finland ratified the Istanbul Convention in August 2015. A committee on combating violence against women and domestic violence was set up to promote and monitor the implementation of the Convention It is preparing an Istanbul Convention implementation plan for the years 2018–2021.

29(c)

28. Under the Act on the Prosecution Service (439/2011), section 6, subsection 1) prosecutors shall carry out the consideration of charges and their other duties promptly and impartially. Examples of discretionary grounds for urgency mentioned in these guidelines include the risk of deterioration of the evidentiary value of witness testimony, and an important private interest. These grounds for urgency often become applicable in cases of sexual assault and violent crime against women and children, meaning that in such cases, a stricter timetable applies to the consideration of charges and other prosecutorial measures than in other cases. Such cases also take priority.

29(d)

29. The victim of a crime may have access to a support person at the various stages of the criminal proceedings. Furthermore, the victim has the right to a legal counsel in filing a police report, during interviews and in court proceedings.

30. The EU Victims Directive has resulted in improvements to the standing of victims in Finland. Implementation of the Directive in Finland necessitated amendments to legislation. These amendments entered into force in 2016.

29(e)

31. Rape means forcing another into sexual intercourse by the use or threat of violence directed against the person (Criminal Code of Finland (39/1889), chapter 20, section 1, subsection 1). Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is unable to defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape (subsection 2 of the above section).

32. The law was amended in 2011 to the effect that sexual intercourse with a person unable to defend himself or herself constitutes rape regardless of the role of the offender in the arising of the defenceless state. Chapter 20, section 3 of the Criminal Code concerning coercion into sexual intercourse was repealed in 2014 and offences previously considered less severe than rape are now punished under the provisions concerning rape.

33. Acts where the victim did not voluntary consent to the act are punishable as rape under chapter 20, section 1 of the Criminal Code. The manner of formulation of the provisions concerning rape is influenced by the national tradition of penal provision formulation. Instead of the precise wording of the constituent elements, attention should be paid to the precise substance of the provisions. The principle of legality in criminal cases requires punishable conduct to be precisely defined in law. Constructing legislation on the basis of express consent may be deemed an unfamiliar approach. Consent may be given in circumstances where the free will of the giver of consent has been inappropriately influenced. Adopting consent as a constituent element might result in a greater degree of attention being paid to the conduct of the victim, which in turn might lead to victims finding the criminal proceedings even more burdensome than at present.

29(f)

34. In 2017, shelters have been allocated funding of EUR 13.55 million. It has been agreed in the budget spending limits that shelter funding will increase by EUR 2 million annually until 2019. In addition, in its mid-term review, the Government agreed on an increase in step of EUR 2 million starting in 2018. This will allow the number of places in shelters also to be increased.

35. Shelter services in sparsely populated areas are being improved by means of 'off-site shelters', i.e. shelters whose clients reside at a 24-hour social services or healthcare unit that is not designated as a shelter and where psychosocial support is provided from the central shelter by means of remote access. A pilot off-site shelter with its central unit in Oulu and the off-site shelter in Kajaani operated in 2016 in Kainuu. In 2017, the Kainuu off-site shelter was put on an established, state-funded footing.

29(g)

36. The new Courts Act (673/2016) entered into force in early 2017. Provisions on the Judicial Training Board and its duties are laid down in chapter 21, section 1 of the Act. It's functions of are, among other things, to attend to the planning of the training to be arranged for court members, referendaries, draftpersons, court notaries and other personnel The first

training programme arranged by the Board, a three-year programme for assistant judges, started in September 2017.

37. The Office of the Prosecutor General arranges annual training for prosecutors on the topic of sexual and violent offences against women and children. The training covers all forms of sexual and physical violence. A separate training event is held annually on the topic of human trafficking. Police detectives and judges are welcome to attend the courses.

38. The National Institute for Health and Welfare has organised key instructor training for social and healthcare professionals in local government on the topics of domestic violence and violence in close relationships as well as violence against women.

29(h)

39. Forced marriage is already punishable in Finland and regulation of the topic also satisfies the relevant requirements of the Istanbul Convention. The reasoning of the Government proposal (155/2014, pp. 51–52) and the report of the Employment and Equality Committee of Parliament (TyV 15/2014 p. 8) indicates that forcing a person to marry meets the constituent elements of certain crimes punishable under chapter 25 of the Criminal Code: trafficking in human beings as referred to in section 3, aggravated trafficking in human beings as referred to in section 3a, or coercion as referred to in section 8.

31(a)

40. The criminal legislation on trafficking in human beings meets the relevant international obligations. The legislation was most recently revised in 2014 (Government proposal 103/2014) to clarify i.a. the relationship between pandering and trafficking in human beings.

41. The Anti-Trafficking Action Plan for the years 2016–2017 aims, for example, at developing a governmental anti-trafficking coordination and the broad co-operation with stakeholders as well as establishing a National Referral mechanism (NRM).

31(b)

42. The Office of the Prosecutor General regularly organizes training for prosecutors. The next training will take place in the beginning of 2018.

43. A project on "Developing guidance and training for health care, social workers and professionals of different root level organizations on identifying victims of trafficking and assisting them" has been launched (2017–2018).

44. The European Institute for Crime Prevention and Control (HEUNI) is carrying out a project which forms part of the Nordic Counter Trafficking for Forced Labour Project on preventing the exploitation of the workforce and trafficking of human beings through corporate social responsibility.

45. Identification of vulnerable populations is one of the main goals of the health examination protocol for newly arrived asylum seekers. Therefore, the health examination protocol that will be developed over the course of the TERTTU project (2017–2019) will also contain questions that can facilitate identifying victims of human trafficking.

31(c)

46. Finland has implemented the directive (2011/36/EU) of the European parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims. According to this directive and Finnish national legislation, *inter alia* the Act on the Reception of Persons Seeking International Protection (746/2011), victims of human trafficking have without delay access to legal counselling and to legal representation.

Victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, *inter alia*, by having access to witness protection programs, according to the Witness Protection Program Act (88/2015) which also applies to victims of trafficking offence in serious danger directed to life or health.

33(c)

47. The Istanbul Protocol to the UN Convention against Torture concerning the identification, treatment and documentation of victims of torture was addressed in the training for physicians providing prisoner healthcare arranged by the National Institute of Health and Welfare on 30 November 2016. Agreement was reached on the same occasion on the systematic reporting and follow-up of any suspected torture victims.

48. The PALOMA model gives detailed recommendations for recognition and treatment of victims of torture and severe violence for professionals on different fields of mental health work in Finland.

49. Healthcare personnel of reception centers will be provided with a health examination protocol as the result of the TERTTU project. Identification of victims of torture and severe violence will be included as one of the areas in the health examination protocol. Assessment of possible torture and severe violence experiences will be recommended to be systematically included into the health examination conducted by reception center healthcare personnel.